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December 30, 2013

ELECTRONIC MAIL ONLY

Marla McDade Williams
Deputy Administrator
Division of Public and Behavioral Health
medicalmarijuana@health.nv.gov

Re: Comments re: Medical Marijuana Regulations after first Hearing.

Dear Ms. McDade Williams:

Thank you for the opportunity to submit comments after the first workshop conducted on December 23, 2013. Before we provide specific comments, I would like to take the opportunity to clarify one point from our initial letter to you on December 16, 2013. Our suggested revisions in Section 69(1) regarding direct access to the customer indicated our belief that a customer would enjoy an opportunity to “touch or smell” a particular product. The reference to “touch” was misplaced. While we do believe a customer would benefit from visually inspecting and smelling a product prior to purchase, they should not be permitted to touch the product. The suggested language is correct, and should remain, but I would like to delete our reference to permitting the touching of the product.

Once again, thank you for this opportunity to work with you through this exciting process. We hope you will take our comments into consideration as we work through the final versions of the regulations.

Section 26:

We SUPPORT the suggested language from Vicente Sederberg to provide narrative descriptions up to 500 words to display the applicant’s demonstration of knowledge or expertise with respect to compassionate use of marijuana and non-profit business operations.

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Sections 27 & 29

We are NEUTRAL to the comments from Vicente Sederberg regarding the applicability of Sections 27 & 29 but agree that the language of those Sections requires clarification. The intent of the Division appears to be to apply this section to each local jurisdiction.

Suggested Language:

Sec. 27. 1. If the Division receives more than one timely application in a local jurisdiction to operate a medical marijuana establishment and the Division determines that more than one of the applications is complete and in compliance with chapter 453A of NRS and this chapter, the Division will rank all of the applications in order from first to last based on compliance with the provisions of chapter 453A of NRS and this chapter and on the content of the applications as it relates to the following, and award such certificates as required in accordance with Section 28.

Section 33:

We SUPPORT the comments made by Vicente Sederberg regarding inspection by local fire protection, “upon receipt of an application for a medical marijuana establishment registration certificate.” While the Division will need to review safety plans of the proposed establishment, the actual property will not be constructed until after the registration certificates are issued. The fire protection review should be conducted by the local governments, rather than the Division.

Sec. 33. 1. The Division may, upon receipt of an application for a medical marijuana establishment registration certificate, conduct an investigation into the premises, facilities, qualifications of personnel, methods of operation, policies and purposes of any person proposing to engage in the operation of a medical marijuana establishment. The facility is subject to inspection and approval as to standards for safety from fire, on behalf of the Division, by the local fire protection agency. If a local fire protection agency is not available, the State Fire Marshal may conduct the inspection after the establishment pays the appropriate fee to the State Fire Marshal for such inspection,

~~*2. The Division shall not issue a medical marijuana establishment registration certificate until the Division completes an inspection of the establishment that may require more than one visit to the establishment.*~~

3. In addition to complying with the provisions of chapter 372A of NRS and chapter 372A of NAC governing the imposition of an excise tax on medical marijuana establishments, a medical marijuana establishment may not operate until it has been issued a medical marijuana establishment registration certificate from the Division.

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4. *The Local Government Division will not issue a business license or otherwise approve a medical marijuana establishment registration certificate until it has received a satisfactory report of inspection of the establishment from the State Fire Marshal or the applicable fire protection agency.*

Section 35(1):

We SUPPORT revision to this section regarding surrendering a medical marijuana registration certificate, “[b]efore an additional person gains an ownership interest in the medical marijuana establishment...” It has been suggested that in order to permit an ownership interest in a medical marijuana establishment, the proposed owner must be found suitable by the Division to become an owner. We would Support this concept, and suggest adding language to that effect.

Suggested Language:

1. *Any person who the Division determines is qualified to be found suitable to be an owner of a medical marijuana establishment, having due consideration for the proper protection of the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and the declared policy of this State, may be found suitable or receive any approval required by this regulation, as appropriate.*

2. *An application to be found suitable to be an owner of a medical marijuana establishment must not be granted unless the Division is satisfied that the applicant is:*

(a) *A person of good character, honesty and integrity;*

(b) *A person whose prior business activities, or criminal record, if any, do not pose a threat to the public interest of this State or to the effective regulation and control of medical marijuana establishments or create or enhance the dangers of unsuitable, or illegal practices, methods and activities in the conduct of medical marijuana establishments; and*

(c) *In all other respects qualified to be licensed or found suitable consistently with the declared policy of the State.*

Section 50:

SUPPORT comments from Shane Johnson, M.D. relating to advertising approval of the Division, especially relating to social media or online advertising. We believe the Division should have authority to ensure advertising is consistent with the policies of the State, and ensure it is not unnecessarily targeted towards minors; however, it’s impractical to believe the Division

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could regulate every piece of advertising, and thus, we recommend the Division approve logos, and can, where appropriate, limit the types of advertising.

Suggested Language:

Sec. 50. *A medical marijuana establishment shall not use:*

1. A name or logo unless the name or logo has been approved by the Administrator of the Division; or

2. Any sign or medium for advertisement unless the sign or medium for advertisement has been approved by the Administrator of the Division.

Section 57(3)(d)(3):

SUPPORT comments from Shane Johnson, MD regarding tracing the “origin” of a plant. Given the competitive nature of the industry, the origin of seeds or marijuana cuttings would be trade secrets that should not be divulged by a medical marijuana establishment to its competitors. We request this section be amended to require only the strain of the seeds or cuttings.

Section 68:

SUPPORT allowing for an out-of-state patient to sign an affidavit stating the patient has a valid recommendation from his or her home state. This point addresses several sections in the Regulations relating to a “valid registry identification card.” By using this defined term (NRS 453A.140), we are inadvertently preventing out-of-state patients to have access because the defined term limits registry identification cards to those issued by the Division. No out-of-state patient would qualify for a card issued by the Division. Therefore, we would suggest amendments throughout the regulation to, where appropriate, refer to “valid registry identification card or foreign state approval” and add a definition to the Regulation as follows:

Sec. . “foreign recommendation” means any medical marijuana card issued in another state or doctor recommendation for the use of medical marijuana that is lawfully valid in another state.

Section 73:

SUPPORT the concept of permitting child--proof containers; however, we are reluctant to limit packaging to plastic. Glass packaging is a popular, safe, and environmentally friendly method of packaging medical marijuana products, and we request clarification in the regulation permitting use of glass packaging.

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Section 79(1)(e)

SUPPORT Vicente Sederberg's comment regarding patient privacy and therefore removing the requirement that the patient's name be mandated on the product's label.

Section 115:

SUPPORT comment from Todd Youren and others regarding a cultivation facility providing an expiration date for the medical marijuana. At this point, we are unaware of any scientifically supported duration for the freshness of medical marijuana and the length of time upon which one can rely on lab test results may be limited in duration. With that said, we do agree that edibles should have an expiration date, not because of the medical marijuana included in the product, but because of the ancillary food included in the product.

Section 132:

SUPPORT the many comments regarding the Division's ability to unilaterally limit cultivation of medical marijuana. If the Division believes it is necessary to regulate the supply of medical marijuana in the market, we believe the Division should not have the complete discretion, but should enumerate specific factors for reasons to limit production.

Suggested Language.

Sec. 132. *The Division may, upon findings made following a public hearing, that the public interest will be supported by limiting the cultivation of medical marijuana in this state ~~at its discretion~~, limit the amount of marijuana in production within the State of Nevada.*

Sincerely,

FENNEMORE CRAIG JONES VARGAS



John P. Sande IV

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